

§ 4.242

she may adhere to the former decision, modify or vacate it, or make such further order as is warranted.

(e) Upon entry of a final order, the administrative law judge or Indian probate judge must lodge the complete record relating to the petition with the designated LTRO under § 4.236(b), and furnish a duplicate record thereof to the Superintendent.

(f) Successive petitions for rehearing are not permitted, and except for the issuance of necessary orders *nunc pro tunc* to correct clerical errors in the decision, the jurisdiction of the administrative law judge or Indian probate judge terminates upon the issuance of a decision finally disposing of a petition for rehearing. Nothing herein prevents the Board from remanding a case for further hearing or rehearing after appeal.

(g) At the time the final decision is entered following the filing of a petition for rehearing, the administrative law judge or Indian probate judge must direct a notice of such action with a copy of the decision to the Superintendent and to the interested parties and must mail the same by regular mail to the said parties at their addresses of record.

(h) No distribution may be made under such order for a period of 75 days following the mailing of a notice of decision pending the filing of a notice of appeal by an aggrieved party as provided in this subpart.

§ 4.242 Reopening.

(a) A person claiming an interest in an estate may file a petition in writing for reopening of the case if he or she:

(1) Had no actual notice of the original proceedings;

(2) Was not on the reservation or otherwise in the vicinity at any time while the public notices of the hearing were posted; and

(3) Files the petition within 3 years after the date of a final decision issued by an administrative law judge, Indian probate judge, or the Board, except as provided in §§ 4.203 and 4.206 and paragraph (i) of this section.

(b) The petition must be addressed to the administrative law judge or Indian probate judge and filed at his or her office. The petitioner must also furnish a

43 CFR Subtitle A (10-1-08 Edition)

copy of the petition to the Superintendent. All grounds for the reopening must be set forth fully. If based on alleged errors of fact, all such allegations must be under oath and supported by affidavits.

(c) If the administrative law judge or Indian probate judge finds that proper grounds are not shown, he or she will issue an order denying the petition and giving the reasons for the denial. Copies of the administrative law judge's or Indian probate judge's decision must be mailed to the petitioner, the Superintendent, and to those persons who share in the estate.

(d) If the petition appears to show merit, the administrative law judge or Indian probate judge must cause copies of the petition and all papers filed by the petitioner to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition.

(1) These persons may resist the petition by filing answers, cross-petitions, or briefs. The filings must be made within the time periods set by the administrative law judge or Indian probate judge.

(2) The administrative law judge or Indian probate judge will then reconsider, with or without a hearing as he or she may determine, prior actions taken in the case and may either adhere to, modify, or vacate the original decision.

(3) Copies of the administrative law judge's or Indian probate judge's decision must be mailed to the petitioner, to all persons who received copies of the petition, and to the Superintendent.

(e) To prevent manifest error, an administrative law judge or Indian probate judge may reopen a case within 3 years from the date of the final decision, after due notice on his or her own motion, or on petition of a BIA officer. Copies of the administrative law judge's or Indian probate judge's decision must be mailed to all interested parties and to the Superintendent.

(f) The administrative law judge or Indian probate judge may suspend distribution of the estate or the income therefrom during the pendency of reopening proceedings by order directed to the Superintendent.

(g) The administrative law judge or Indian probate judge must lodge the record made in disposing of a reopening petition with the designated LTRO under § 4.236(b) and must furnish a duplicate record thereof to the Superintendent.

(h) No distribution may be made under a decision issued under paragraph (c), (d), or (e) of this section for 75 days following the mailing of the copy of the decision as therein provided, pending the filing of a notice of appeal by an aggrieved party.

(i) A petition for reopening filed more than 3 years after the entry of a final decision in a probate proceeding will be allowed only upon a showing that:

- (1) A manifest injustice will occur;
- (2) A reasonable possibility exists for correction of the error;
- (3) The petitioner had no actual notice of the original proceedings; and
- (4) The petitioner was not on the reservation or otherwise in the vicinity at any time while the public notices were posted.

(j) The administrative law judge or Indian probate judge may deny a petition filed under paragraph (i) of this section on the basis of the petition and available BIA records. No such petition will be granted unless the administrative law judge or Indian probate judge:

- (1) Has caused copies of the petition and all other papers filed by the petitioner to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition; and
- (2) Has allowed those persons an opportunity to resist the petition by filing answers, cross petitions, or briefs as provided in paragraph (d) of this section.

CLAIMS

SOURCE: 70 FR 11821, Mar. 9, 2005, unless otherwise noted.

§ 4.250 Filing and proof of creditor claims; limitations.

(a) All claims against the estate of a deceased Indian must be filed with the agency:

- (1) Within 60 days from the date BIA receives a certified copy of the death certificate or other verification of the

decedent's death under 25 CFR 15.101; or

(2) Within 20 days from the date the creditor is chargeable with notice of the decedent's death, whichever of these dates is later, unless all of the heirs and/or beneficiaries agree to waive the applicable time limit and allow a late claim to be filed.

(b) No claim will be paid from trust or restricted assets when the deciding official is aware that the decedent's non-trust estate may be available to pay the claim.

(c) All claims must be filed in triplicate, itemized in detail as to dates and amounts of charges for purchases or services and dates and amounts of payments on account.

(1) Each claim must show the names and addresses of all parties in addition to the decedent from whom payment might be sought.

(2) Each claim must be supplemented by an affidavit, in triplicate, of the claimant or someone on his or her behalf that:

- (i) The amount claimed is justly due from the decedent;
- (ii) No payments have been made on the account which are not credited thereon as shown by the itemized statement; and
- (iii) There are no offsets to the knowledge of the claimant.

(d) Claims for care may not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected.

(e) A claim based on a written or oral contract, express or implied, where the claim for relief has existed for such a period as to be barred by the State laws at date of decedent's death, cannot be allowed.

(f) Claims sounding in tort not reduced to judgment in a court of competent jurisdiction, and other unliquidated claims not properly within the jurisdiction of a probate forum, may be barred from consideration by an interim order from the deciding official.

(g) Claims of a State or any of its political subdivisions on account of social security or old-age assistance payments will not be allowed.